

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

COW PALACE, LLC, *et al.*,

Defendants.

Civil No. 24-CV-3092-TOR

**STIPULATED PROTECTIVE
ORDER**

The parties to this Stipulated Protective Order have agreed to the terms of this Protective Order; accordingly, it is ORDERED:

1. **Purpose and Limitations.** Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with Federal Rule of Civil Procedure 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. **Scope.** Discovery Materials are subject to this Protective Order upon
2 being designated as Protected Information by the Producing Party in accordance
3 with Paragraphs 4–6 or, in the case of deposition testimony, transcripts, and
4 exhibits, as described in Paragraph 5 and 11(b). The protections conferred by this
5 Order cover not only Protected Information (as defined below) but also (1) any
6 information copied or extracted from Protected Information; (2) all copies,
7 excerpts, summaries, or compilations of Protected Information; and (3) any
8 testimony, conversations, or presentations by parties or their counsel that might
9 reveal Protected Information. However, the protections conferred by this Order do
10 not cover information that is in the public domain or becomes part of the public
11 domain through trial or otherwise.

12 3. **Definitions.**

13 (a) “Discovery Material” means documents, ESI, information, or
14 other material produced or adduced in the course of discovery in this litigation,
15 including initial disclosures; responses to subpoenas, interrogatories, and requests
16 for production; deposition testimony and exhibits; and information derived
17 therefrom.

18 (b) “ESI” means electronically stored information in any form.

19 (c) “Parties” means the parties to this litigation including their
20 counsel.

1 (d) “Producing Party” means: (i) a Party to this litigation including
2 their counsel who is producing documents, ESI, or other materials in response to a
3 discovery request served in this action; or (ii) a person or their counsel who is
4 producing documents, ESI, or other materials in response to a subpoena served in
5 connection with this action.

6 (e) “Protected Information” means Discovery Materials that are
7 asserted to be entitled to confidential treatment and have been designated as
8 subject to this Protective Order in accordance with Paragraph 5.

9 (f) “Non-Party Protected Information” means Discovery Materials
10 that contain information a Producing Party received from a non-party and that has
11 been designated as Protected Information by the Producing Party because (i) the
12 submitting non-party has asserted that the Discovery Materials are entitled to
13 confidential treatment under Rule 26(c) of the Federal Rule of Civil Procedure,
14 (ii) the submitting non-party has claimed that the Discovery Materials are protected
15 from public disclosure when it submitted the materials to the United States (e.g.,
16 information in the possession, custody, or control of the U.S. Environmental
17 Protection Agency that was designated as “Confidential Business Information,”
18 “Proprietary,” “Trade Secret,” “Business Confidential,” or the substantial
19 equivalent thereof and submitted pursuant to 40 C.F.R. Part 2, Subpart B, prior to
20 the commencement of this action), or (iii) the United States has informed the

1 submitting non-party that the Discovery Materials would be protected from public
2 disclosure by applicable federal law.

3 **4. Designation.**

4 (a) If a Producing Party has a good faith belief that certain
5 Discovery Materials are entitled to confidential treatment, the Producing Party may
6 designate such Discovery Materials as subject to this Protective Order by marking
7 them in accordance with Paragraph 5. The grounds for designating Discovery
8 Materials as subject to this Protective Order include, without limitation:

9 (i) information prohibited from disclosure by statute,
10 regulation, rule, or other law;

11 (ii) information that reveals trade secrets or confidential
12 business information;

13 (iii) research, technical, commercial, or financial information
14 that has been maintained as confidential;

15 (iv) medical information concerning any individual;

16 (v) personally identifiable information, including without
17 limitation social security numbers and financial information associated with
18 individuals;

19 (vi) income tax returns (including attached schedules and
20 forms), W-2 forms, and 1099 forms; or

1 (vii) personnel or employment records of an individual.

2 (b) Notwithstanding subparagraph (a) should any Party wish to
3 designate any Discovery Material as being Protected Information, the designating
4 Party may also provide redacted versions of such materials that need not be treated
5 as confidential.

6 (c) Use of Search Terms or Other Technology. The prosecution
7 and defense of this action will require each Party to review and to disclose large
8 quantities of information and documents, including ESI, through the discovery
9 process. As a result, a full page-by-page preproduction review of Discovery
10 Materials may impose an undue burden on the Parties' resources that is
11 disproportionate to the needs of the case. Therefore, the Court determines that a
12 Producing Party may designate Discovery Materials as subject to this Protective
13 Order based on search terms, filtering, or other method or computer technology
14 reasonably employed to identify information that might be entitled to confidential
15 treatment.

16 (d) If the Producing Party is not a Party to this litigation, it shall
17 provide contact information to the Parties of record by filling out the form in
18 Attachment B and providing it to the Party who requested the Discovery Materials.
19 Within 30 days of receiving a form submitted under this subparagraph, the Party
20

1 that requested the Discovery Materials must serve a copy on all counsel of record
2 in accordance with Rule 5 of the Federal Rules of Civil Procedure.

3 (e) Information or documents that are available to the public may
4 not be designated as Protected Information.

5 (f) Communications regarding settlement of this matter may not be
6 designated as Protected Information, unless the communication includes
7 information that, if shared outside of the settlement context would properly be
8 designated as Protected Information. Nothing in this subparagraph alters the
9 parties' rights or responsibilities under Federal Rule of Evidence Rule 408.

10 (g) The Producing Party may revoke its designation of Discovery
11 Materials as subject to this Protective Order by providing a copy that is not marked
12 in accordance with Paragraph 5, or by having counsel of record orally withdraw
13 the designation on the record during a deposition. The Producing Party must
14 revoke its designation of Discovery Materials as subject to this Protective Order if
15 it intends to use the materials in litigation and it determines that the materials do
16 not contain Protected Information.

17 **5. Marking of Discovery Materials as Subject to this Protective**
18 **Order.** To designate paper documents, image files, or tangible things, the
19 Producing Party shall mark each page, image, or thing with the words
20 "SUBJECT TO PROTECTIVE ORDER." For image files, including placeholders,

1 these words must be branded onto each image (as opposed to an overlay), and must
2 be positioned, as much as possible, to avoid obscuring parts of the image that are
3 not blank.

4 Testimony given in deposition or in other pretrial proceedings may be
5 designated as Protected Information by the Parties or any participating non-party
6 identifying on the record, during the deposition or other pretrial proceeding, all
7 protected testimony, without prejudice to their right to so designate other testimony
8 after reviewing the transcript. Any Party or non-party may, within thirty days after
9 receiving the transcript of the deposition or other pretrial proceeding, designate
10 portions of the transcript, or exhibits thereto, as Protected Information. If a Party or
11 non-party desires to protect Protected Information at trial, the issue should be
12 addressed during the pre-trial conference.

13 A Producing Party may designate a tangible item as Protected Information
14 by affixing in a prominent place on the exterior of the container or containers in
15 which the information or item is stored the words “SUBJECT TO PROTECTIVE
16 ORDER.” To the extent practicable, the tangible item shall also be marked with the
17 words “SUBJECT TO PROTECTIVE ORDER.”

18 **6. Inadvertent Failure to Designate.** An inadvertent failure to
19 designate Discovery Materials as Protected Information does not, standing alone,
20 waive the right to so designate the Discovery Materials; provided, however, that a

1 failure to serve a timely Notice of Designation of deposition testimony as required
2 by this Protective Order, even if inadvertent, waives any protection for deposition
3 testimony. If a Producing Party designates a document as Protected Information
4 after it was initially produced, the other Parties, on notification of the designation,
5 must make a reasonable effort to assure that the document is treated in accordance
6 with the provisions of this Protective Order, and the Producing Party shall provide
7 replacement documents marked in accordance with Paragraph 5. No Party shall be
8 found to have violated this Protective Order for failing to maintain the
9 confidentiality of material during a time when that material has not been
10 designated Protected Information. If a Party identifies a document (not previously
11 marked or identified as Protected Information) that appears on its face or in light of
12 facts known to the Party to contain Protected Information of any person, the Party
13 identifying the information is under a good-faith obligation to notify the Producing
14 Party and/or the interested person of the disclosure. Such notification does not
15 waive the identifying Party's ability to subsequently challenge any assertion that
16 the document contains Protected Information. If the Producing Party or other
17 interested person wishes to assert that the document contains Protected
18 Information, it shall provide such notice and replacement copies endorsed in
19 compliance with this Protective Order.
20

1 7. **Challenges to Designations.** The designation of any Discovery
2 Materials as Protected Information is subject to challenge by any Party at any time,
3 as follows.

4 (a) **Meet and Confer.** A Party challenging the designation of
5 Protected Information must do so in good faith and must begin the process by
6 conferring directly with counsel for the Producing Party. In conferring, the
7 challenging Party must explain the basis for its belief that the designation was not
8 proper and must give the Producing Party an opportunity to review the designated
9 material, to reconsider the designation, and, if no change in designation is offered,
10 to explain the basis for the designation. The Producing Party must respond to the
11 challenge within 15 business days, unless the parties agree to an alternative
12 timeline. The Parties must make every attempt to resolve any dispute regarding
13 confidential designations without court involvement. A good faith effort to confer
14 requires a face-to-face meeting (in person or via electronic means) or a telephone
15 conference.

16 (b) **Judicial Resolution.** If, after satisfying the requirements of
17 Paragraph 7(a), a Party elects to challenge a designation, that Party may file and
18 serve a motion that identifies the challenged material and sets forth in detail the
19 basis for the challenge. Each such motion must be accompanied by a certification
20 of counsel that affirms that the movant has complied with the meet and confer

1 requirements of Paragraph 7(a) of this Protective Order. The Producing Party shall
2 bear the burden of persuasion in any such challenge proceeding, provided however,
3 that a person in interest may seek to intervene in accordance with the Federal Rules
4 of Civil Procedure. Until the Court rules on the challenge, all parties shall continue
5 to treat the materials as Protected Information under the terms of this Protective
6 Order.

7 **8. Production Protocols.**

8 (a) In the case of Discovery Materials being produced
9 electronically, the Producing Party shall enclose with such production a load file
10 that includes a field that indicates which records correspond to Protected
11 Information.

12 (b) Discovery Materials that are designated in accordance with
13 Paragraph 5 are Protected Information under this Protective Order, regardless of
14 the Producing Party's failure to comply with this Paragraph 8(a).

15 **9. Disclosure of Protected Information.** Unless otherwise ordered by
16 the court or permitted in writing by the designating party, a receiving party may
17 only disclose Protected Information to:

18 (a) the receiving party's counsel of record in this action, as well as
19 persons employed by counsel (including but not limited to law clerks, paralegals,
20

1 and administrative or clerical personnel) to whom it is reasonably necessary to
2 disclose the information for this litigation;

3 (b) employees of the U.S. Department of Justice, attorneys
4 employed by EPA, and federal law enforcement officers in connection with a
5 federal law enforcement investigation;

6 (c) the officers, directors, and employees (including in house
7 counsel) of the receiving party to whom disclosure is reasonably necessary for this
8 litigation;

9 (d) experts, investigators, and consultants to whom disclosure is
10 reasonably necessary for this litigation and who have signed the “Acknowledgment
11 and Agreement to Be Bound” (Exhibit A);

12 (e) the court, court personnel, court reporters, and their staff;

13 (f) copy or imaging services, including their employees and agents,
14 retained by counsel to assist in the duplication of Protected Information, provided
15 that counsel for the party retaining the copy or imaging service instructs the service
16 not to disclose any Protected Information to third parties and to immediately return
17 all originals and copies of any Protected Information;

18 (g) during their depositions, witnesses in the action to whom
19 disclosure is reasonably necessary and who have signed the “Acknowledgment and
20 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating

1 party or ordered by the court. Pages of transcribed deposition testimony or exhibits
2 to depositions that reveal Protected Information must be marked as “SUBJECT TO
3 PROTECTIVE ORDER” by the court reporter, or in the alternative be bound in a
4 separate volume, and may not be disclosed to anyone except as permitted under
5 this order;

6 (h) the author or recipient of a document containing the
7 information or a custodian or other person who otherwise possessed or knew the
8 information; and

9 (i) Other persons only by written consent of the Producing Party or
10 upon order of the Court and on such conditions as may be agreed or ordered.

11 **10. Use of Protected Information.** Except as stated below, neither the
12 Parties nor any third party contemplated by Paragraph 9 of this Protective Order
13 shall use Protected Information for any purpose other than prosecuting, defending,
14 or attempting to settle this litigation.

15 (a) The Parties may use information as authorized by an order of
16 this Court.

17 (b) The United States may use Protected Information for law
18 enforcement purposes and may, notwithstanding any other provision of this
19 agreement, disclose Protected Information to law enforcement agencies.
20

1 **11. Procedures Regarding Use of Protected Information.**

2 (a) **Control of Documents.** Counsel for the Parties shall make
3 reasonable efforts to prevent unauthorized or inadvertent disclosure or use of
4 Protected Information.

5 (b) **Depositions.**

6 (i) All deposition testimony taken in this case shall be
7 treated as Protected Information from the time that the deposition begins until
8 thirty days after the transcript is delivered in final form to each Party that has
9 ordered a copy, unless the Parties in attendance at the deposition agree, on the
10 record or in writing, to a shorter time period.

11 (ii) Prior to the expiration of the time period provided in
12 Paragraph 11(b)(i), any Party may serve a Notice of Designation to all Parties
13 identifying the specific portions of the transcript that are designated Protected
14 Information. After the time period provided in Paragraph 11(b)(i) expires, only
15 those portions of the transcript identified in a Notice of Designation or designated
16 on the record during the deposition will continue to be Protected Information under
17 this Protective Order, unless otherwise ordered by the Court.

18 (iii) Notwithstanding anything to the contrary in this
19 Paragraph 11(b), a Party may disclose prior deposition testimony to a witness
20 during his or her deposition in accordance with Paragraph 9.

1 (c) **Filing of Protected Information.** The Parties may not file
2 Protected Information except under seal. However, this Protective Order does not,
3 by itself, authorize the filing of any document under seal. Any Party wishing to file
4 Protected Information in connection with a motion, brief, or other submission to
5 the Court must comply with Fed. R. Civ. P. 5.2 and the Eastern District of
6 Washington's Procedures for Filing of Sealed Documents (Oct. 2, 2020), available
7 at
8 [https://www.waed.uscourts.gov/sites/default/files/electronic_how/Sealed_Handout](https://www.waed.uscourts.gov/sites/default/files/electronic_how/Sealed_Handout_for_Civil_Cases-20201002.pdf)
9 [_for_Civil_Cases-20201002.pdf](https://www.waed.uscourts.gov/sites/default/files/electronic_how/Sealed_Handout_for_Civil_Cases-20201002.pdf).

10 (d) **Use of Protected Information at Trial or Hearing.** A Party
11 that intends to present or that anticipates that another Party may present Protected
12 Information at a hearing or trial shall bring that issue to the Court's and parties'
13 attention by motion or in a pretrial memorandum without disclosing the Protected
14 Information. The Court may thereafter make such orders as are necessary to govern
15 the use of such documents or information at trial.

16 12. **Inadvertent Disclosure.** If a Party learns that, by inadvertence or
17 otherwise, it has disclosed Protected Information to any person or in any
18 circumstance not authorized under this Protective Order, that Party must make
19 reasonable efforts to (i) notify in writing the Producing Party of the unauthorized
20 disclosures, (ii) use best efforts to retrieve the original and all unauthorized copies

1 of the Protected Information, (iii) inform the person or persons to whom
2 unauthorized disclosures were made of all the terms of this Protective Order, and
3 (iv) request that such person or persons execute the “Acknowledgement and
4 Agreement to be Bound” that is attached hereto as Attachment A. A Party that
5 complies with the terms of this Paragraph promptly after learning of an inadvertent
6 disclosure of Protected Information will be deemed in compliance with the
7 requirements of this Protective Order, 40 C.F.R. Part 2, Subpart B., and the Trade
8 Secrets Act.

9 **13. Effect of this Protective Order.**

10 (a) The production of documents by a Producing Party pursuant to
11 this Protective Order constitutes a court-ordered disclosure within the meaning of
12 40 C.F.R. § 2.209(d); the Privacy Act, 5 U.S.C. § 552a(b)(11); the Health
13 Insurance Portability and Affordability Act of 1996 (HIPAA) implementing
14 regulations, 45 C.F.R. § 164.512(a), (c)(1)(i); and the Trade Secrets Act, 18 U.S.C.
15 § 1905.

16 (b) Except on privilege or work product grounds not addressed by
17 this Protective Order, no person may withhold documents, information, or other
18 materials from discovery in this litigation on the ground that they require
19 protection greater than that afforded by this Protective Order, unless that person
20 moves for an order providing such special protection.

1 (c) Nothing in this Protective Order prohibits any Party from using
2 or disclosing, for purposes other than this litigation, documents or information that
3 the Party obtained outside of this litigation.

4 (d) Nothing in this Protective Order or any action or agreement of a
5 Party limits the Court's power to make orders concerning the disclosure of
6 documents produced in discovery or at trial.

7 (e) Nothing in this Protective Order may be construed or presented
8 as a final judicial determination that any Protected Information is entitled to
9 protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise
10 until such time as the Court may rule on a specific document or issue.

11 **14. Documents requested or demanded by non-parties.**

12 (a) If any Party is served with a subpoena, court order, or discovery
13 request issued in other litigation that compels disclosure of any information, ESI,
14 or other Discovery Materials, or other material designated as Protected Information
15 by another Producing Party, the Party served with the subpoena, court order, or
16 discovery request must, within ten days of determining that the request seeks
17 Protected Information:

18 (i) notify the Producing Party in writing and provide a copy
19 of the subpoena or court order;
20

1 (ii) promptly notify in writing the party who caused the
2 subpoena or order to issue in the other litigation that some or all of the material
3 covered by the subpoena or order is subject to this agreement. Such notification
4 shall include a copy of this agreement; and

5 (iii) cooperate with respect to all reasonable procedures
6 sought to be pursued by the designating party whose Protected Information may be
7 affected.

8 (b) The Parties shall not produce Protected Information in response
9 to any request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, or
10 any discovery request or other request or demand except in compliance with:

11 (i) this Protective Order (e.g., with the consent of the Producing Party), (ii) a
12 directive of this Court removing the designation as Protected Information, or (iii) a
13 lawful directive of another court.

14 (c) If the United States withholds Protected Information from its
15 response to a FOIA request and the requesting party subsequently files an action or
16 motion in court challenging that withholding, the United States shall, as soon as
17 practicable, provide notice to the Producing Party of service of the action or
18 motion. Notice will be provided with sufficient time for the Producing Party to
19 intervene and object to production. The United States shall not produce Protected
20 Information without the consent of the Producing Party or before providing the

1 Producing Party an opportunity to object to the production, unless the court orders
2 immediate disclosure.

3 (d) Nothing in this order prohibits a Party from filing a motion with
4 this Court seeking modification of this order to allow the disclosure of Protected
5 Information. Any such motion must be served on the Parties in accordance with
6 the Federal Rules of Civil Procedure and must describe in detail the proposed
7 disclosure.

8 **15. Obligations on Conclusion of Litigation.**

9 (a) **Continued Confidentiality Obligations.** The confidentiality
10 obligations imposed by this order shall remain in effect until a designating party
11 agrees otherwise in writing or a court orders otherwise.

12 (b) **Obligations at Conclusion of Litigation.** Within ninety (90)
13 days after dismissal or entry of final judgment not subject to further appeal and
14 subject to the Federal Records Act, 44 U.S.C. § 3101 et seq., and other legal
15 obligations, the Parties shall take reasonable steps to ensure that all Protected
16 Information is destroyed or returned to the Producing Party. Copies of Protected
17 Information that are stored on electronic media that is not reasonably accessible,
18 such as disaster recovery backup media, need not be returned or destroyed so long
19 as they are not made accessible (e.g., disaster recovery backups are not restored); if
20 such data are made accessible, the receiving Party must take reasonable steps to

1 return or destroy the restored Protected Information or documents as provided by
2 this subparagraph.

3 (c) **Retention of Work Product and One Set of Filed**

4 **Documents.** Notwithstanding the above requirements to return or destroy
5 Protected Information, counsel for the Parties may retain: (1) attorney work
6 product, including an index that refers or relates to designated Protected
7 Information so long as that work product does not duplicate verbatim substantial
8 portions of Protected Information, and (2) one complete set of all documents filed
9 with the Court including those filed under seal, trial, deposition, and hearing
10 transcripts, correspondence, deposition and trial exhibits, expert reports, attorney
11 work product, and consultant and expert work product, even if such materials
12 contain Protected Information. To the extent additional copies are retained by
13 counsel of record notwithstanding the employment of reasonable efforts to return
14 or destroy Protected Information, such retained copies remain protected under this
15 order. An attorney may use his or her work product in subsequent litigation,
16 provided that its use does not disclose or use Protected Information.

17 (d) **Retention of Law Enforcement Documents.** Notwithstanding
18 the above requirements to return or destroy Protected Information, law
19 enforcement agencies may retain Protected Information in use for law enforcement
20

1 purposes pursuant to Paragraph 9(b), subject only to applicable laws and
2 regulations, e.g., 28 C.F.R. part 16.

3 16. This Protective Order is subject to the Local Rules of this District and
4 the Federal Rules of Civil Procedure on matters of procedure and calculation of
5 time periods.

6
7 It is SO ORDERED this 27th day of May, 2025.



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A handwritten signature in blue ink that reads "Thomas O. Rice". The signature is written over a horizontal line.

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19
20

Thomas O. Rice
United States District Judge
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ATTACHMENT A

[Caption]

**ACKNOWLEDGMENT OF UNDERSTANDING AND AGREEMENT TO
BE BOUND**

The undersigned hereby acknowledges that he/she has read the Protective Order dated _____ in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the Eastern District of Washington in matters relating to the Protective Order and understands that the terms of the Protective Order obligate him/her to use materials designated as or asserted to be Protected Information in accordance with the specific terms of the Protective Order. The undersigned acknowledges that violation of the Protective Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

Phone Number: _____

1 Email Address: _____

2 Date: _____

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4 Signature: _____

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Attachment B

[Caption]

**Contact Information for Non-Party
Producing Documents Subject to Protective Order**

On [Date], the Court entered a protective order, ECF No. __, (the “Protective Order”). The person identified below is not a Party to this action but is a “Producing Party” within the meaning of the Protective Order. In accordance with the terms of the Protective Order, the contact information for this Producing Party is as follows:

Name of Producing

Party:

Contact Person:

Mailing Address:

Phone:

This contact information is being provided to [name of party issuing subpoena], who must, under the terms of the Protective Order, serve a copy of this form on all counsel of record pursuant to Rule 5 of the Federal Rules of Civil Procedure. This contact information may be changed at any time by submitting new information using this form to [name of party issuing subpoena].